

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 7. Mediation Questionnaire**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form07instructions.pdf>*

**9th Cir. Case Number(s)** 21-17062

**Case Name** Atari Interactive, Inc. v. Redbubble Inc.

**Counsel submitting this form** George Laiolo of Browne George Ross O'Brien  
Annaguey & Ellis LLP

**Represented party/  
parties** Atari Interactive, Inc.

*Briefly describe the dispute that gave rise to this lawsuit.*

Plaintiff and Appellant Atari Interactive, Inc. (“Atari”) is an iconic videogame company, credited with being a pioneer in the industry. Atari owns a number of trademarks and copyrights related to its name, logo, and video games, which are registered with the U.S. Copyright Office and U.S. Patent and Trademark Office.

Defendant and Appellee Redbubble, Inc. (“Redbubble”) is a print-on-demand website. Using images uploaded to its website by users, Redbubble has advertised, sold, and shipped large quantities of counterfeit and infringing products, including counterfeit and infringing Atari products.

Atari thus sued Redbubble for trademark infringement and counterfeiting, copyright infringement, trademark dilution, false designation of origin, and common law unfair competition based on Redbubble's alleged unlawful use of Atari's trademarks and copyrighted works.

*Briefly describe the result below and the main issues on appeal.*

At summary judgment, the Court held Redbubble is not willfully blind as a matter of law, undercutting Atari's contributory infringement theories, which the parties then stipulated would not be presented at trial, with Atari reserving its appellate rights. After a jury trial, the jury held Redbubble did not infringe Atari's trademarks on either a direct or vicarious liability theory, and did not infringe Atari's copyrights on a direct liability theory.

The main issues on appeal are the District Court's original and supplemental orders on summary judgment concerning Redbubble's willful blindness and willfulness, the District Court's orders on motions in limine, and the jury instructions, including but not limited to, the instruction concerning what constitutes trademark use, the refusal to instruct the jury as how to determine whether Redbubble acts as a seller, and the instruction on vicarious liability.

*Describe any proceedings remaining below or any related proceedings in other tribunals.*

Atari and Redbubble are litigating Redbubble's motion for costs and attorneys' fees in the District Court. Atari also has similar pending actions in the Northern District of California (3:19-cv-00111), and the Southern District of New York (1:21-cv-04272).

**Signature**

**Date**

*(use "s/[typed name]" to sign electronically-filed documents)*